

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

OREGON COAST BANK, an Oregon full-service financial institution,

Plaintiff,

v.

F/V CAP ELZA, O.N. 521054, its Engines, Machinery, Appurtenances, etc., and F/V IRISH MISS, O.N. 563523, its Engines, Machinery, Appurtenances, etc., *In Rem*; and

F/V CAP ELZA LLC, an Oregon limited liability company, and TIMOTHY R. SMITH, individually, and DILLAN A. SMITH, individually and in his official capacity as Member/Manager of F/V CAP ELZA LLC; *In Personam*,

Defendants.

Case No.: 6:24-cv-00981-MC

IN ADMIRALTY

ORDER FOR FORECLOSURE OF LIENS, ENTRY OF JUDGMENT, AWARD OF ATTORNEYS' FEES AND COSTS, AND FOR SALE OF VESSELS

Clerk's Action Required

THIS MATTER having come for consideration upon Motion For (1) Order Foreclosing Liens/Mortgages And For Entry Of Default Judgment (2) Award Of Attorneys' Fees And Costs; And (3) Order For Sale Of Vessels And Permits, ECF No. 25, and the Court having considered the pleadings and papers submitted, and having found the attorneys' fees requested to be reasonable, granted that Motion, the Court hereby further FINDS and ORDERS as follows:

1. Plaintiff Oregon Coast Bank ("OCB"), having obtained default against Defendants herein, and having set forth evidence to support its requests for relief, are entitled to the entry of judgment in their favor, and for the foreclosure of their mortgage and lien rights under federal and state law.

2. OCB's federal and state liens established by the Security Agreements and Preferred Ship Mortgages against *in rem* Defendant F/V IRISH MISS and F/V CAP ELZA, including the appurtenant fishing rights consisting of Oregon Limited Entry Dungeness Crab Permit No. 96486, Oregon Limited Entry Pink Shrimp Permit No. 90140, Oregon Limited Entry Troll Salmon Permit No. 62755, Washington Pink Shrimp Permit No. 15-575-027, Oregon Limited Entry Dungeness Crab Permit No. 96069 and Oregon Limited Entry Troll Salmon Permit No. 60611 are hereby foreclosed.

3. Default judgment shall be entered in favor of Plaintiff OCB and against Defendants Timothy Smith and F/V IRISH MISS as follows:

- a. Principal owed in the amount of \$585,692.66.
- b. Pre-judgment interest in the amount of \$25,873.37 as of June 18, 2024 plus additional interest at a rate of \$192.63 per day until judgment is entered.
- c. Reasonable attorneys' fees and litigation costs in the amount of \$16,220.73.

- d. Arrest and Marshal's costs incurred by Plaintiff in the amount of \$25,200.24.
- e. Judgment shall accrue post-judgment interest at a rate of \$192.63 per day until paid.

4. FURTHER, default judgment shall be entered in favor of Plaintiff OCB and against

Defendants' Dillan Smith, F/V Cap Elza LLC, and F/V CAP ELZA as follows

- a. Principal owed in the amount of \$450,229.19.
- b. Pre-judgment interest in the amount of \$11,364.18 as of June 19, 2024 plus additional interest at a rate of \$149.18 per day until judgment is entered.
- c. Reasonable attorneys' fees and litigation costs in the amount of \$15,620.73.
- d. Arrest and Marshal's costs incurred by Plaintiff in the amount of \$25,200.24.
- e. Judgment shall accrue post-judgment interest at a rate of \$149.18 per day until paid.

5. The vessels F/V CAP ELZA (O.N. 521054) and F/V IRISH MISS (O.N. 563523) and Oregon Department of Fish and Wildlife (1) Oregon Limited Entry Dungeness Crab Permit No. 96486; (2) Oregon Limited Entry Pink Shrimp Permit No. 90140; (3) Oregon Limited Entry Troll Salmon Permit No. 62755; (4) Oregon Limited Entry Dungeness Crab Permit No. 96069; and (5) Oregon Limited Entry Troll Salmon Permit No. 60611; and Washington Department of Fish and Wildlife Washington Pink Shrimp Permit No. 15-575-027 ("Fishing Rights") as appurtenances of the Vessels and additional secured collateral, have been condemned to be sold by the United States Marshal for the District of Oregon. The sale shall occur in accordance with the Supplemental Admiralty Rules and Local Admiralty Rules, as well as the practices and procedures used by the Marshal for this District. The Vessels and Fishing Rights may be sold separately or together at Plaintiff's option, so long as any such sale complies with applicable rules and Marshal's procedures.

6. As required by LR 1045-1, prior to any sale of the Vessels or Permits, a notice of sale

will be published by Plaintiff or the Marshal daily in accordance with LR 1050-1 for a period of at least ninety-six (96) hours prior to the day of any sale.

7. The Vessels and Permits shall be sold on an "AS IS, WHERE IS" basis at one or more Marshal's public auction to the highest bidder, free and clear of any liens and encumbrances.

8. Plaintiff OCB, or its designee, shall be permitted to attend any sale of the Vessels or Permits and shall be permitted to credit bid the judgment entered against Defendants by this Court, in any increment up to the full amount of the judgment. Any portion of the judgments not used as a credit bid for the successful purchase of the Vessels or Permits shall remain unsatisfied until paid.

9. Except for any credit bid as authorized herein, any proceeds of the sale of either the Vessels or the Fishing Rights shall be deposited in the registry of the Court, and will be held there pending further order of the Court.

10. Upon confirmation of sale of the Vessels, the Marshal shall release the Vessels from custody to the buyer and the Substitute Custodian shall be released.

10. In accordance with LR 1045-5, at the conclusion of the sale of the Vessels and/or Permits, the Marshal will forthwith file a written report to the Court of the fact of sale(s), the date thereof, the price obtained and the name and address of the buyer.

DATED this 4th day of November, 2024.

/s/ Michael J. McShane
Michael McShane
United States District Judge